SUPREME COURT, U. S.

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No. 262

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

MRS. MARTHA BAILEY CRICHTON,

Petitioner

v.

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE, and POWELL CRICHTON, JR.,

Respondents

APPENDIX

TO

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

R. L. CURRY, III
THOS. W. LEIGH
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OF COUNSEL

APPENDIX

(bound separately)

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APPENDIX A

SUCCESSION OF POWELL CRICHTON
PROBATE NO. 3430
TWENTY-SIXTH JUDICIAL DISTRICT COURT
OF LOUISIANA
IN AND FOR THE PARISH OF WEBSTER

JUDGMENT

This cause having come on regularly for trial on December 12, 1966, upon the Petition and Rule to Homologate and Approve Inventory, filed herein on June 3, 1965, by Margaret S. Hemingway, Testamentary Executrix, the Answers thereto filed, respectively, by Powell Crichton, Jr., Mrs. Gloria Crichton McGehee, O. H. Haynes, Jr., Sheriff and Ex-Officio Inheritance Tax Collector, and Kate Crichton and Edward Bailey Crichton; upon the Petition for Possession of Interest in Community Property, filed herein on July 6, 1965, by Mrs. Martha Bailey Crichton, the Answers thereto filed, respectively, by Margaret S. Hemingway, Testamentary Executrix, and Kate Crichton and Edward Bailey Crichton; and upon the Stipulation of the parties heretofore made a part of the record and formally filed herein (as Joint Exhibit 1) on February 13, 1969, and the Court having considered, for the reasons orally assigned on February 13, 1969, that the law and evidence are in favor of respondents Powell Crichton, Jr. and Mrs.

Gloria Crichton McGehee, and against petitioner Margaret S. Hemingway, Testamentary Executrix, respondent and petitioner Mrs. Martha Bailey Crichton, and respondents Kate Crichton and Edward Bailey Crichton,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the injunction issued herein on December 8, 1965, directed to Margaret S. Hemingway, Testamentary Executrix, enjoining her from disposing of, alienating or removing from the State of Louisiana, any of the movable property of the Succession of Powell Crichton claimed by Mrs. Martha Bailey Crichton as community property, be and the same is hereby dissolved, rescinded and annulled;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order issued herein on May 4, 1966, denying the motion of Powell Crichton, Jr. and Mrs. Gloria Crichton McGehee for partial summary judgment, be and the same is hereby recalled, rescinded and annulled;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that that certain Opinion and Decision and that certain Final Order, dated, respectively, March 9, 1966, and March 17, 1966, rendered by the Surrogate's Court in and for the County of Westchester, State of New York, in the proceeding styled "In the Matter of the Judicial Settlement of the Intermediate Account of Margaret S. Hemingway, as Executrix of

the Last Will and Testament of Powell Crichton, Deceased", bearing File No. 408-1963 on the docket of that court, as affirmed on June 1, 1967, by the Court of Appeals of the State of New York (said affirming opinion being reported at 20 N.Y. 2nd 124, 281 N.Y. Supp. 2nd 811), be and the same are hereby found to be entitled to, and are hereby given, full faith and credit by this Court pursuant to Article IV, Section 1 of the Constitution of the United States, and are hereby deemed to be res judicata of all matters at issue herein (except matters involving immovable properties of the Succession, as hereafter set forth); and, accordingly, Mrs. Martha Bailey Crichton is hereby declared to have no interest in the movable properties of the Succession and her petition for possession is hereby dismissed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Inventory and Appraisement of properties of the Succession in Webster Parish, Louisiana, filed herein on April 26, 1964, be and the same is hereby modified and amended in the following particulars, to-wit:

(1) Paragraph I of said Inventory and Appraisement, entitled "REAL PROPERTY BELONGING TO THE SEPARATE ESTATE OF POWELL CRICHTON", is amended: (a) by adding thereto the following:

"An undivided one-sixth (1/6th) interest in and to the following described property, to-wit:

Township 18 North, Range 9 West

Section 10: S½ of SW¼, being 80 acres, more or less; said one-sixth interest valued at $100.00

Section 15: NE¼ of NW¼, being 40 acres, more or less (LESS AND EXCEPT tracts previously sold therefrom); said one-sixth interest valued at 50.00

Township 19 North, Range 8 West

Section 4: S½ of NE¼, being 80 acres, more or less; said one-sixth interest valued at 100.00

Township 19 North, Range 10 West

Section 13: NW¼ of NE¼ and SW¼ of NE¼, being 80 acres, more or less; said one-sixth interest valued at 50.00

Township 21 North, Range 10 West

Section 31: An undivided one-half (½) interest in NE¼ of NE¼, S½ of NE¼ and NW¼ of SE¼, being 160 acres, more or less, said 1/6th interest in said undivided 1/2 interest (or a total of an undivided 1/12 interest) valued at 100.00

Township 22 North, Range 9 West

Section 14: An undivided one-eigth (1/8th) interest in E½ of NW¼, SW¼ of NE¼, and NE¼ of SW¼, being 160 acres, more or less, said 1/6th interest in said undivided 1/8th interest (or a total of an undivided 1/48th interest) valued at 25.00";

and (b) by deleting the total appraisement in said Paragraph I of "$29,112.13" and substituting therefor the following:

"TOTAL VALUE OF REAL ESTATE BELONGING TO DECEDENT'S SEPARATE ESTATE $29,537.13";

(2) Paragraph III of said Inventory and Appraisement, entitled "REAL PROPERTY BELONGING TO THE COMMUNITY OF ACQUETS AND GAINS FORMERLY EXISTING BETWEEN POWELL CRICHTON (DECEDENT) AND HIS SECOND WIFE, MRS. MARTHA BAILEY CRICHTON, DECEDENT'S SURVIVING WIDOW, REFERRED TO AS 'SECOND COMMUNITY' ", is amended: (a) by deleting therefrom the following:

"An undivided one-third interest in and to the following:

Township 18 North, Range 9 West

Section 10: S½ of SW¼, being 80 acres;

	more or less; decedent's undivided one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at	$100.00
Section 15:	NE¼ of NW¼, containing 40 acres, more or less; LESS AND EXCEPT tracts previously sold therefrom; decedent's undivided one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at	50.00

* * * * *

Township 19 North, Range 8 West

Section 4:	S½ of NE¼, containing 80 acres, more or less; decedent's one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at	100.00

Township 19 North, Range 10 West

* * * * *

Section 13: NW¼ of NE¼; and the SW¼ of NE¼; containing 80 acres, more or less; decedent's one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at 50.00

Township 21 North, Range 10 West

* * * * *

Section 31: An undivided one-half interest in the NE¼ of NE¼, the S½ of NE¼, and the NW¼ of SE¼; containing 160 acres, more or less; decedent's one-half community interest in said undivided one-half interest of said undivided one-third interest (or a total of an undivided one-twelfth (1/12th) interest) valued at 100.00

Township 22 North, Range 9 West

Section 14: An undivided one-eighth interest in and to the E½ of NW¼, the SW¼ of NE¼, and the NE¼ of SW¼, containing 160

acres, more or less; decedent's community one-half interest in said one-third interest in said one-eighth (or a total of an undivided one-forty-eighth (1/48th) interest valued at 25.00";

and by substituting therefor the following:

"An undivided one-sixth interest in and to the following:

Township 18 North, Range 9 West

Section 10: S½ of SW¼, being 80 acres, more or less; decedent's undivided one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12th) interest) valued at $50.00

Section 15: NE¼ of NW¼; containing 40 acres, more or less; LESS AND EXCEPT tracts previously sold therefrom; decedent's undivided one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12th) interest) valued at 25.00

* * * * *

Township 19 North, Range 8 West

Section 4: S½ of NE¼, containing 80 acres, more or less; decedent's one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12th) interest) valued at 50.00

Township 19 North, Range 10 West

* * * * *

Section 13: NW¼ of NE¼, and the SW¼ of NE¼, containing 80 acres, more or less; decedent's one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12) interest) valued at 25.00

Township 21 North, Range 10 West

* * * * *

Section 31: An undivided one-half interest in the NE¼ of NE¼, the S½ of NE¼, and the NW¼ of SE¼ containing 160 acres, more or less; decedent's one-half community interest in said undivided one-half interest

of said undivided one-sixth interest (or a total of an undivided one-twenty-fourth (1/24th) interest) valued at . 50.00

Township 22 North, Range 9 West

Section 14: An undivided one-eighth interest in and to the E½ of NW¼, the SW¼ of NE¼, and the NE¼ of SW¼, containing 160 acres, more or less; decedent's community one-half interest in said one-sixth interest in said one-eighth (or a total of an undivided one-ninety-sixth (1/96th) interest) valued at 12.50";

and (b) by deleting the total appraisement in said Paragraph III of "$819.47" and substituting therefor the following:

"TOTAL VALUE OF DECEDENT'S INTEREST IN REAL PROPERTY BELONGING TO SECOND COMMUNITY $606.97";

(3) Paragraph V of said Inventory and Appraisement, entitled "PERSONAL PROPERTY OF DECEDENT WITHIN THE STATE OF LOUISIANA, ALL BELONGING TO THE COMMUNITY OF ACQUETS AND GAINS HERETOFORE EXISTING BETWEEN DECEDENT AND HIS SECOND WIFE, MRS. MARTHA BAILEY CRICHTON, HIS SUR-

VIVING WIDOW, REFERRED TO AS THE 'SECOND COMMUNITY' ", is amended: (a) by deleting said caption and substituting therefor the following:

"V. PERSONAL PROPERTY BELONGING TO THE SEPARATE ESTATE OF THE DECEDENT, POWELL, CRICHTON";

(b) by deleting from Subparagraph B thereof the following:

"4 (a) Interest due on November 15, 1962 on above described treasury notes $1,868.75";

(c) by adding to said Subparagraph B the following:

"5 (a) Interest due November 15, 1962 on above described treasury certificates $ 525.00";

(d) by deleting the total appraisement in said Subparagraph B of "$195,349.91" and substituting therefor the following:

"TOTAL STOCKS, BONDS AND DIVIDENDS $194,006.16";

(e) by deleting from Subparagraph C thereof the following:

"1. Interest in ledger credit balance of T. Crichton, Jr., Agent, Minden, Louisiana $21,508.30

"2. LESS one-third of liabilities and debts as of November 15, 1962 3,416.29

Total $18,092.01";

(f) by deleting the total appraisement in said Subparagraph C of "$22,898.80" and substituting therefor the following:

"TOTAL MISCELLANEOUS PERSONAL PROPERTY $ 4,806.79";

and (g) by deleting from the summary of said Paragraph V the following:

"SUMMARY OF PERSONAL PROPERTY:

A. CASH ON HAND	$ 88,032.79
B. STOCKS, BONDS AND DIVIDENDS DUE	195,349.91
C. MISCELLANEOUS	22,898.80
TOTAL PERSONAL PROPERTY	$306,281.50
"DECEDENT'S UNDIVIDED COMMUNITY ONE-HALF INTEREST THEREIN	$153,140.75";

and substituting therefor the following:

"SUMMARY OF PERSONAL PROPERTY:

A. CASH ON HAND	$ 88,032.79
B. STOCKS, BONDS AND DIVIDENDS DUE	194,006.16
C. MISCELLANEOUS	4,806.79
TOTAL PERSONAL PROPERTY	$286,845.74";

(4) Paragraph VI of said Inventory and Appraisement, entitled "VALUE OF TIMBER" is amended: (a) by deleting Subparagraph A and C thereof in their entirety and substituting therefor the following:

"A. VALUE OF TIMBER located on real property described in Paragraph I hereof, computed on the basis of $7.50 per acre for the decedent's undivided interest, valued at $ 13,137.88

* * * * *

"C. VALUE OF TIMBER located on real property described in Paragraph III hereof, computed on the basis of $7.50 per acre for the decedent's undivided interest, valued at 467.85";

and (b) by deleting the total appraisement in said Paragraph VI of $13,493.23" and substituting therefor the following:

"TOTAL VALUE of timber belonging to Decedent's Estate $ 13,705.73";

(5) The Recapitulation of said Inventory and Appraisement is amended by deleting the same in its entirety and substituting therefor the following:

"RECAPITULATION

I.	VALUE OF REAL ESTATE BELONGING TO DECEDENT'S SEPARATE ESTATE	$29,537.13
II.	VALUE OF DECEDENT'S INTEREST IN REAL ESTATE BELONGING TO FIRST COMMUNITY	766.67
III.	VALUE OF DECEDENT'S INTEREST IN REAL ESTATE BELONGING TO SECOND COMMUNITY	$ 606.97
	TOTAL REAL ESTATE	$ 30,910.77
IV.	VALUE OF SEPARATE MINERAL INTEREST	230.16
V.	VALUE OF PERSONAL PROPERTY	286,845.74
VI.	VALUE OF DECEDENT'S INTEREST IN TIMBER	13,705.73
	GRAND TOTAL	$331,692.40";

and as amended herein said Inventory and Appraisement, and the Inventories and Appraisements of properties of the Succession in the Parishes of Bossier and Claiborne, are hereby approved and homologated;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the expert witness fee of M. Alton Evans,

Jr. be fixed in the sum of One Thousand Nine Hundred and No/100 ($1,900.00) Dollars and the same is hereby taxed as cost herein;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Margaret S. Hemingway, Testamentary Executrix, be cast for all costs of this proceeding, including the expert witness fee of M. Alton Evans, Jr.

JUDGMENT RENDERED in Open Court on February 13, 1969, by Judge Price.

JUDGMENT READ, SIGNED AND FILED in Open Court this 7th day of May, 1969.

Monty M. Wyche
JUDGE, Twenty-Sixth Judicial District
Court in and for Webster Parish, Louisiana.

APPENDIX B

NO. 11,316

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

MRS. MARTHA BAILEY CRICHTON
PLAINTIFF-APPELLANT

vs.

SUCCESSION OF POWELL CRICHTON
(MISS MARGARET S. HEMINGWAY,
ANCILLARY TESTAMENTARY EXECUTRIX)
DEFENDANTS-APPELLEES

BEFORE AYRES, DIXON, WILLIAMS, JJ

DIXON, J. CONCURS WITH WRITTEN REASONS.
By Williams, J.

Powell Crichton died in New York on November 15, 1962 at the age of 78. He was born in Louisiana but left the state when he was very young. He practiced law in New York for many years and resided in Westchester County. In 1916 Powell Crichton married for the first time of which marriage two children, Powell Crichton, Jr. and Mrs. Gloia Crichton McGehee were born. The first Mrs. Crichton died in Westchester County, New York in 1923. In 1925 Mr. Crichton married a second time to Martha Bailey Crichton, the plaintiff-appellant. Two children were

born of this marriage. In 1935 the couple separated, Mrs. Crichton thereafter living in the British Colony, Bermuda, although the couple was never divorced. At his death Mr. Crichton was survived by his four children and his widow. According to the terms of his will, dated November 13, 1953, the entire estate passed in trust to his surviving children. No provision was made for his surviving wife. The bulk of his estate consisted of bank accounts, stocks, bonds and an interest in a partnership, all in Louisiana. He also left some real property located in Louisiana. The intangible movable property is the subject of this litigation.

Miss Margaret S. Hemingway, Mr. Crichton's secretary, was named Executrix in his will. Succession proceedings were opened in the state of New York where the will was admitted to probate on January 30, 1963 and Miss Hemingway qualified as Testamentary Executrix. On August 20, 1963 ancillary succession proceedings were opened in Louisiana and Miss Hemingway qualified as Ancillary Executrix. She filed an inventory purporting to describe and value the Louisiana properties and sought approval of the inventory. The personal property involved here was listed in the inventory as belonging to the second community and was valued at a total of $306,281.50. The widow asserted a claim to an undivided one-half interest in the personal property left by decedent and sought an order to

show cause why her community interest should not be recognized. She further sought to enjoin the Executrix from removing any of the property from Louisiana during the pendency of the proceedings. The son and daughter of the first marriage excepted to the jurisdiction of the Louisiana court to determine the ownership of the personal property. On January 4, 1966 the District Court overruled the exceptions. The Executrix was permanently enjoined from transferring the assets out of Louisiana.

On September 20, 1965 the Executrix filed an account in New York in which the widow's share of community property was listed as unpaid. Mrs. McGehee, the daughter of the first marriage, objected to the account primarily on the ground of inapplicability of Louisiana community property law. Mrs. Crichton objected to the account on the basis that the properties were held by Mrs. Hemingway solely as Ancillary Testamentary Executrix in Louisiana and could not be removed or disposed of because of the Louisiana injunction. Mrs. Crichton made no effort to assert any rights in Mr. Crichton's estate under New York law. The entire basis of her claim is based on LSA-C.C. Art. 2400[1]. Mrs. McGehee filed a motion for summary judgment. In a contradictory proceeding

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[1] "Art. 2400. All property acquired in this state by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."

the Surrogate Court of Westchester County held that Louisiana's community property laws were not applicable and sustained the objection to the widow's claim. The court recognized that it had jurisdiction over the subject matter and jurisdiction over the person of all parties. **In Re Crichton's Will, 49 Misc. 2d 405, 267 N.Y.S. 2d 706 (1966).**

The children of the first marriage sought recognition in the Louisiana Court of the judgment of the Surrogate Court under the Full Faith and Credit clause by means of a motion for partial summary judgment. This motion was denied by the district court. From this ruling application for supervisory writs were made to this court and the Louisiana Supreme Court. The applications were denied on the ground that an adequate remedy could later be had on appeal.

The Executrix and widow appealed the Surrogate's decision to the Supreme Court, Appellate Division (Second Department) of the State of New York which unanimously affirmed the Surrogate decision rejecting the widow's claim. **In the matter of the Will of Powell Crichton, Deceased, 26 A.D. 2d 639, 272 N.Y.S. 2d 987 (1966).** Before the case was decided the widow's appeal was dismissed for failure to prosecute. The Executrix appealed to the New York Court of Appeals, the highest court of that state, which in an opinion by the Honorable Keating, J., unanimously affirmed the decision of the Surrogate

Court. **In Re Estate of Crichton, 20 N.Y. 2d 124, 281 N.Y.S. 2d 811, 228 N.E. 2d 799 (1967).** That court held that New York law should be applied, relying primarily on the legal fiction that movables follow the person "mobilia sequuntur personam".

The instant case was thereafter tried in Louisiana. The trial court held that the final judgment of the New York Court of Appeals was entitled to full faith and credit. The previous ruling overruling an exception of res judicata was recalled and the exception was then sustained. In his oral opinion the judge below went on to say that if he were considering the matter on its merits he would have likewise chosen to apply the law of New York. The court further ordered the dissolution of the injunction previously issued. The widow has appealed suspensively from this judgment.

Article IV, Section 1 of the United States Constitution provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State . . ."

This mandate was supplemented by the Act of Congress, 28 U.S.C.A. S1738.[2]

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2 "The Act of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of Such State, Territory or Possession thereto. "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its

The federal jurisprudence has uniformly placed a judgment on a different level than a statute of another state. The United States Supreme Court reviewed the subject in **Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 88 L. ed 149 (1944).** The Court therein reversed the Court of Appeal, State of Louisiana, 1st Circuit, which affirmed the judgment of the District Court of Calcasieu Parish, granting supplemental relief under Louisiana Workmen's Compensation law to an injured workman who had already received disability payments under Texas Workmen's Compensation law.[3] The Court made the following observation:

> "* * * In thus refusing, on the basis of state law and policy, to give effect to the Texas award as a final adjudication of respondent's claim for compensation for his injury suffered in Texas, the Louisiana court ignored the distinction, long recognized and applied by this Court, and recently emphasized in Williams v. North Carolina, supra (317 US 294, 296, 87 L. ed 283, 284, 63 S Ct 207, 143 ALR 1273), between the faith

2 .Cont'd,
Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, C. 646, 62 Stat. 947."

(28 U.S.C.A. S1738)

3 It was later recognized that the constitutional requirement of full faith and credit did not bar an additional award in the second state unless the award in the first state was actually exclusive in nature. **Industrial Commission v. McCartin, 330 U.S. 622, 91 L. ed 1140 (1947).** However, the fundamental precepts of **Magnolia v. Hunt,** supra, remain unchanged.

and credit required to be given to judgments and that to which the local common and statutory law is entitled under the Constitution and laws of the United States."

* * *

"The full faith and credit clause and the Act of Congress implementing it have, for most purposes, placed a judgment on a different footing from a statute of one state, judicial recognition of which is sought in another . . ."

"From the beginning this Court has held that these provisions have made that which has been adjudicated in one state res judicata to the same extent in every other . . .

"* * * Even though we assume for present purposes that the command of the Constitution and the statute is not all-embracing, and that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another, this Court is the final arbiter of the extent of the exceptions. * * * And we pointed out in Williams v. North Carolina, supra (317 US 294, 295, 87 L ed 283, 284, 63 S Ct 207, 143 ALR 1273), that 'the actual exceptions have been few and far between . . .'

* * *

"These consequences flow from the clear purpose of the full faith and credit clause to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other. The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application. * * * Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment and a plaintiff may not for his single cause of action secure a second or a greater recovery."
(88 L ed 153 - 156)

The Supreme Court has further elucidated the rule that full faith and credit must be given to a foreign judgment even as to findings of jurisdiction

when that question has been litigated in the court rendering the original judgment.[4]

The Court succinctly stated the rule of res judicata as follows:

> "One trial of an issue is enough. 'The principles of res judicata apply to questions of jurisdiction as well as to other issues,' as well to jurisdiction of the subject matter as of the parties."
>
> (Treinies v. Sunshine Mining Co., 308 U.S. 66, 78; 84 L ed 85, 93 (1939)).

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[4] In Durfee v. Duke, 375 U.S. 106, 11 L ed 2d 186, 84 S Ct 242 (1963) the following language is pertinent:

"However, while it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of the Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit — even as to questions of jurisdiction — when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

"With respect to questions of jurisdiction over the person, this principle was unambiguously established in Baldwin v. Iowa State Traveling Men's Assn., 283 US 522, 75 L ed 1244, 51 S Ct 517. There it was held that a federal court in Iowa must give binding effect to the judgment of a federal court in Missouri despite the claim that the original court did not have jurisdiction over the defendant's person, once it was shown to the court in Iowa that that question had been fully litigated in the Missouri forum. 'Public policy,' said the Court, 'dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. **We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.**' 283 US, 525-526. 75 L ed at 1247." (Emphasis supplied).

(Durfee v. Duke, 375 US 106,11 L Ed 2d 186, 191, 192; 84 S Ct 242)

Error in the proceeding of the other court is not a defense to enforcement of a judgment.[5]

The Louisiana Courts have recognized the requirement of full faith and credit. In Biri v. Biri, 192 So. 2d 862 (La. App. 4th Cir. 1966) the court gave full faith and credit to a Texas divorce decree where both parties were domiciled in Texas when the divorce proceedings were instituted as found by the Texas court. The court recognized that Louisiana could concern itself only with the question of domicile and jurisdiction over the parties and the issues in a suit for recognition of a foreign judgment. In **Mente & Company v. Anciens Etablissements Verdier-Dufour & Cie., 177 La. 829, 149 So. 492 (1933),** the Louisiana Supreme Court remanded a case to the trial court for the purpose of receiving proper evidence of the New

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[5] See Milliken v. Meyer, 311 U.S. 457, 85 L ed 278, (1941) where the Court made the following statements:

"Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry . . . But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disapproved by extrinsic evidence, or by the record itself.' Adam v. Saenger, supra (303 US at p. 62, 82 L ed 651, 58 S Ct 454). In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based . . . Whatever mistakes of law may underlie the judgment . . . it is 'conclusive as to all media concludendi.' Fauntleroy v. Lum, supera (210 US at p. 237, 52 L ed 1042, 28 S Ct 641)."

(311 U.S. 457, 462; 85 L ed 278, 282, 283)

York proceedings. The Court stated further:

> "For when two suits involving the same issues between the same parties are brought before two separate courts each clothed with jurisdiction thereof, and both suits are allowed to proceed pari passu, the first judgment rendered in either of said courts is the judgment between the parties, and the suit in the other court immediately abates and must be dismissed. Code Prac. art. 94, as amended by Act No. 62 of 1918."[6]

The requirements for sustaining a plea of res judicata are set forth as follows in Article 2286 of the Louisiana Civil Code:

> "The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality."

The record unquestionably demonstrates that these requirements have been fully met. The issue of the widow's rights has been fully litigated in the New York proceedings. On the basis of the Full Faith and Credit Clause and the interpretation of that clause by the Supreme Court of the United States, we hold that we are bound to accord full faith and credit to the judgment of the Court of Appeals of the State of New York as a final decision between the parties regardless of whether or not the courts of Louisiana would have reached the same result.

The Full Faith and Credit Clause, however, does not require that we agree with another court's interpretation of one of our statutes. The interpretation

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[6] See LSA-C.C.P. art 532.

placed upon Article 2400 is incorrect and the conclusion reached is repugnant to our law.

Article 2400 of the Louisiana Civil Code reads as follows:

> "All property acquired in this State by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."
>
> (LSA-C.C. Art. 2400)

The New York Court of Appeals resolved the choice of law problem by examining the respective contacts which Louisiana and New York have to the controversy. The court posed the issue as follows:

> "The issue in this case is whether the community property laws of Louisiana should be applied to govern the property rights of New York domiciliaries in intangible personal property acquired during coverture. From the previous discussion, it is clear that the community property system is designed to regulate the property rights of married persons and, in particular, to protect the interest of each spouse in the property accumulated during marriage. * * * For reasons which become obvious merely in stating the purpose of the rule, Louisiana has no such interest in protecting and regulating the rights of married persons residing and domiciled in New York."
>
> (20 N. Y. 2d 124, 134)

The Court then made the following statements:

> "It is urged by the appellant that the Louisiana contacts with this case give it the paramount interest in the application of its law. Among the contacts which are urged as being significant are the facts the deceased was born in Louisiana, that, although he was domiciled in New York, the bulk of his fortune was made in Louisiana, and that the documentary evidences of his intangible property are located in that jurisdiction. Exactly how these contacts are related to the polices sought to be vindicated by Louisiana's community property laws is not made clear. The reason, no doubt, is that they have no relation whatever."
>
> (Ibid, p. 134-135)

The court concluded that New York law must be applied. The court then discussed whether Louisiana Courts would apply Louisiana or New York law. The reasons and conclusions are lengthy but deserve repeating here:

> "An examination of the context in which article 2400 was enacted would appear to indicate that it was intended to apply to property purchased by nonresidents who, subsequent to the acquisition of the property, become residents of Louisiana. In two cases decided by the Louisiana Supreme Court shortely before the enactment of article 2400, it was held that the **real** property of such persons located in Louisiana was not subject to the community property laws of Louisiana but rather to the laws of the State where the owners were domiciled at the time the property was acquired. (Huff v. Borland, 6 La. Ann. 436; Wolfe v. Gilmer, 7 La. Ann. 583). Louisiana does, of course, have a substantial interest in regulating the property rights of married persons domiciled in Louisiana, regardless of when the property was acquired, and it is, therefore, reasonable to assume that the effectuation of this governmental interest motivated the enactment of article 2400 . . . It might be noted that, although the Louisiana statutes subject to the community of 'acquets and gains' all property acquired by persons married in other jurisdictions (art. 2399, supra) after they become residents of Louisiana (La. Code of 1870, art 2401), no provision other than article 2400 is applicable to property acquired in Louisiana by nonresidents who later move to Louisiana."
>
> (20 N. Y. 2d 124, 131, 132)

The court then concluded:

> "Up to this point we have not considered whether the Louisiana courts would, in fact, apply their own law to determine the widow's rights in the property in question. Although it would appear from the unequivocal wording of the statute that this would be the case, the previous discussion of the context in which article 2400 was enacted, as well as the pertinent Louisiana decisions in this area, leads to the conclusion that the Louisiana courts might well apply New York law. Perhaps the leading Louisiana case in this area is Williams v. Pope Mfg. Co., 52 La. Ann. 1417, 27 So. 851, 50 L.R.A. 816 (1900). There the Supreme Court of Louisiana held that a cause of action for personal injuries suffered in Louisiana

was an intangible property right which had its legal situs at the domicile of the married woman and could not be said to have been property acquired in Louisiana. Therefore, the plaintiff wife, a nonresident of Louisiana, was permitted to sue instead of her husband. * * *

"This case was distinguished in a later decision of the Louisiana Supreme Court. The court appeared to indicate that the basis of the decision was not that article 2400 was inapplicable but rather that it would not be applied where the domiciliary law was not inimical to the policy of the State of Louisiana. (Matney v. Blue Ribbon, Inc., 202 La. 505, 12 So. 2d 253 (1942).)

"The application of New York law to the facts in this case could hardly be said to be inimical to the policy of Louisiana. The protection afforded the wife under our law certainly makes adequate provision for her financial security. * * * Therefore, whether **Williams** or **Matney** are regarded as controlling, a rather strong argument can be made that the Louisiana courts, under these circumstances, would not apply article 2400."

(20 N.Y. 2d 135, 136).

We cannot agree with the conclusion reached by the New York court. In the first place the court has refused to properly recognize Louisiana's right to establish its own conflict of laws rule. In clear unambiguous terms Article 2400 of the Louisiana Civil Code states the question of ownership of property located within this state is to be determined according to our laws. The right of the situs state to assert such a rule has been approved by commentators in the field of conflict of laws.[7]

---

[7] Professor Leflar has made the following observation:

"It must be remembered, whichever law be chosen, that the situs has a sort of primary control over property within its borders. The situs may refer the determination of marital interests in the movable to the law of the domicile, or it may determine the matter by its own law, as it pleases. For example, the Louisiana community property statutes are expressly applicable to all property, movable or immovable,

The New York court also erroneously relied heavily on cases decided before the passage of Article 2400 which first became part of our law as a result of the passage of Act 292 of 1852. Huff v. Borland, supra; Wolfe v. Gilmer, supra.

The New York court also appears to have completely ignored the most complete interpretation of Article 2400 by the Louisiana courts to date. In **succession of Dill**, 98 So. 752, 155 La. 47 (1924), the Louisiana Supreme Court sets forth the far reaching effects of LSA-C.C. art. 2400. In that decision the court stated:

> "Now it is clear that a community exists in the following cases:
>
> (1) Where the parties marry, and continue to live here.
> (2) Where the parties marry here, and remove out of the state.
> (3). **Where the parties marry outside the state, and continue to reside outside thereof.**
> (4) Where the parties marry outside the state, and then remove here together.
>
> "And all these communities have, as their basis, equality between the spouses; that is to say, properly acquired in this state by either of them falls into the community." (Emphasis supplied).
>
> "We therefore conclude that the accepted interpretation of the act of 1852 (R.C.C. art. 2400) is the correct interpretation thereof, and that **all property acquired in this state by married**

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7 Cont'd

acquired in Louisiana by non-residents. The great body of American authority, however, is to the effect that the law of the domicile, rather than that of the situs, at the time of acquisition controls. . ."

(Robert A. Leflar, The Law of Conflict of Laws, sec. 176 (1959))

persons becomes community property regardless of where both or either of them reside (unless they have contracted otherwise). R.C.C. art. 2329; Act 236 of 1910, p. 400." (Emphasis supplied).

(98 So. 752, 755)

In view of the clear language of Article 2400 and the preceeding authorities we are convinced that Mrs. Crichton was entitled as a substantive right to a one-half interest in the movable property left by the deceased under Louisiana Law.[8] However, as a consequence of the Full Faith and Credit Clause of the Federal Constitution we are bound to hold that the judgment of the State of New York is entitled to res judicata effect in Louisiana.

For the reasons so stated, the judgment appealed from is affirmed. Costs of this appeal are assessed to appellant.

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8 Worthy of note are the comments of the author in 42 Tulane Law Review 662 (1968).

Dixon, J. concurring.

I concur in holding that the New York decree is entitled to recognition under the full faith and credit clause of the United States Constitution. All the requirements of **res judicata** under c.c. 2286 are satisfied.

However, with due respect to the majority, I cannot join in that portion of the opinion which concludes that the New York courts were in error. Having reached the conclusion that is decisive of the case, the court proceeds to contribute to that great body of **obiter dicta** which helps make the law the living, growing, confusing thing that it sometimes becomes.

If we ought to examine whether the application of C.C. 2400 would require a conclusion different from that reached by the New York courts, the examination should be complete. The appellees claim that, even if the property involved is community by operation of C.C. 2400, it was acquired with separate property of the decedent, whose separate estate is entitled to restitution.

There is also a question ignored about the appliation of C.C. 10 to the facts of the case before us. Since that article specifically requires that the effect of the decedent's will be governed by the laws of New York as to the disposition of his movables located in Louisiana, it seems that our own codal provisions might require the same conclusion as that reached by the New York court. In re Lewis, 32 La. Ann. 385.

Further discussion of these two matters would seem to be gratuitous. Therefore, I respectfully concur.

APPENDIX C

COURT OF APPEAL

Second Circuit

State of Louisiana

No. 11,316

Mrs. Martha B. Crichton

v

Succession of Powell Crichton

ON APPLICATION FOR REHEARING

BY PLAINTIFF - APPELLANT

REHEARING REFUSED

MAR 3 - 1970

HAROLD L. BOOTH

CLERK, COURT OF APPEAL

Ayres. J., dissents from refusal

L.

APPENDIX D

SUPREME COURT OF LOUISIANA
New Orleans, 70112

MRS. MARTHA BAILEY CRICHTON April 20, 1970

v.

SUCCESSION OF POWELL CRICHTON No. 50, 471
(MISS MARGARET S. HEMINGWAY,
ANCILLARY TESTAMENTARY EXECUTRIX)

In re: Mrs. Martha Bailey Crichton applying for certiorari, or writ of review to the Court of Appeal, Second Circuit, Parish of Webster

---

Writ Refused.

The result is correct.

/s/ EHMcC
/s/ JBF
/s/ SSL
/s/ WBH
/s/ JWS
/s/ FWS
/s/ MEB

A TRUE COPY

Clerk's Office
Supreme Court of Louisiana
New Orleans, April 20, 1970

/s/ S. Wallace Miller
Deputy Clerk

APPENDIX E

SURROGATE'S COURT : WESTCHESTER COUNTY

In the Matter of the Judicial Settlement of the Intermediate Account of Proceedings of Margaret S. Hemingway, as Executrix of the Last Will and Testament of

POWELL CRICHTON,
Deceased.

OPINION AND DECISION

Duer & Taylor (Frederick M. Schlater and Arthur E. McInerney, of counsel),
Attorneys for Gloria C. McGehee,
Movant-Objectant

LeBoeuf, Lamb & Leiby (John A. Brough and Julian L. Peabody, of counsel),
Attorneys for Martha Bailey Crichton,
Respondent-Objectant

Colin Campbell Ives (Joseph M. Baltz, Jr., of counsel.).
Attorney for Respondent-Petitioner

Sidney S. Bobbe,
Attorney for Powell Crichton, Jr.,
Respondent-Objectant

David Cohn,
Special Guardian for Infants

Jaeger - S.

In an executrix' accounting proceeding the decedent's daughter by his first marriage moves for partial summary judgment as to one of the issues raised by her objections. The motion presents the question of whether the widow of a New York decedent acquired community property rights during

his lifetime in his Louisiana personal property by virtue of a Louisiana statute applicable by its terms to non-domiciliaries when New York was the state of marital domicile and no such rights existed under its laws.

The testator died on November 15, 1962, a resident of this County. His will, dated November 13, 1953, was admitted to probate by this court on February 11, 1963, and letters testamentary were issued to Margaret S. Hemingway, also a New York resident, who had been his secretary. The testator was survived by his second wife, Martha Bailey Crichton, a resident of Bermuda, from whom he had been separated since about 1935, by two children of his first marriage, and two children of his second marriage. The widow was omitted from the will and makes no claim to any rights under New York Law to take against the will by intestacy (Decedent Estate Law sec. 18).

The account reflects an estate of approximately $360,000.00 in personal property, the bulk of which was in Louisiana, and real property in that state. Ancillary proceedings were instituted in Louisiana, and ancillary letters testamentary were issued on April 28, 1964 to Margaret S. Hemingway. Subsequently, on June 3, 1965 the ancillary executrix initiated there a proceeding described as one for approval of her inventory and for the computation of the Louisiana inheritance taxes. The widow asserted therein a claim to community property rights in the personal prop-

erty there inventoried, which is being resisted by the son and daughter of the testator's first marriage. That son and daughter preliminarily excepted to the jurisdiction of the Louisiana court to determine the ownership of personal property of a New York decedent, but the exception to jurisdiction was overruled and the ancillary executrix was permanently restrained from disposing of or removing from the State of Louisiana any of the personal property belonging to the widow by an order of the Twenty-Sixth Judicial District Court, Webster Parish, Louisiana, dated January 4, 1966. As yet, no determination on the merits has been made by that court.

On July 2, 1965 Gloria C. McGehee, the daughter of the first marriage, filed a petition in this court to compel the executrix to account. In response thereto the executrix filed an intermediate account on September 20, 1965. Schedule "D-1" thereof sets forth as unpaid the widow's claim of her share of community property in the sum of $156,000.00. On December 2, 1965 Mrs McGehee filed objections to the account, which include an objection to an allowance of this claim on the ground that (1) Louisiana's community property laws are inapplicable; (2) under Louisiana law the claim is invalid; and (3) the widow has no rights except to take against the will by intestacy, a right which, as noted above, she has not asserted.

The widow thereupon filed an objection to the

inclusion in Schedule "A" of the account filed herein, of the items being accounted for in Louisiana on the grounds that (1) they are held by Margaret S. Hemingway solely as ancillary executrix in Louisiana and have not come into her hands as domiciliary executrix, and (2) the Louisiana court has enjoined the ancillary executrix from removing or disposing of those items.

The **instant** matter before this court is a motion by Mrs. McGehee (1) for partial summary judgment (CPLR Rule 3212[e]), in connection with her objection set forth above, disallowing the widow's claim to community property rights; or (2) in the alternative, for an order directing that such issue be severed and set down for trial; and (3) (a) to enjoin the widow from pressing her claim in any court except this court, and (b) to enjoin the executrix from abetting the widow in pressing said claim in any other jurisdiction.

The entire basis of the widow's claim is Article 2400 of the Louisiana Civil Code, which provides:

> "Art. 2400. Property acquired in state by non-resident
>
> Art. 2400. All property acquired in this State by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."

The movant urges that since the widow was omitted from the will, her interest in this estate is limited to the statutory right of election (Decedent

Estate Law sec. 18, supra), which she has not asserted. It is clear, however, that the widow's position is akin to that of a petitioner in a proceeding to recover specific personal property alleged to be in the possession or under the control of an executrix (Surrogate's Court Act sec. 206-a). She is not claiming an interest in a decedent's estate. Instead she claims that the executrix withholds funds, to which the widow acquired title during the testator's lifetime by reason of the Louisiana statutes that such funds are not assets of this estate. Therefore, the question before the court is as to the ownership of movables owned by the decedent husband at the time of marriage or acquired during the marriage and is not as to any rights the widow may have in the descent and distribution of assets owned by a decedent at the time of his death.

Restatement, Conflict of Laws (1934), provides:

"Sec. 289. EFFECT OF MARRIAGE ON TITLE TO EXISTING MOVABLES.

At marriage the husband and wife respectively acquire such rights or other interests in movables then belonging to the other as are given by the law of the domicil of the husband at the time of the marriage.

* * * * * *

Sec. 290. MOVABLES ACQUIRED DURING MARRIAGE.

Interests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicil of the parties when the movables are acquired.
Comment:

* * * * * *

c. When spouses have separate domiciles. If the spouses have separate domiciles at the time of the acquisition of movables, the law of the domicil of that spouse who acquires

the movables determines the extent of the interest of the other spouse therein.

* * * * * *

Sec. 293. MOVABLES HELD SEPARATELY TAKEN INTO ANOTHER STATE.

Interests in movables held separately by either spouse remain separate interests although the movables are taken into a state which creates community interests therein."

These rules, that the law of the state of the matrimonial domicile, or, in the case of separate domiciles, that the law of the state of the domicile of the spouse who acquires the movables, and not the law of the state or states where the assets may be physically present, controls as to the ownership of husband and wife of personal property, were approved in his treatise by an eminent commentator in this field (2 Beale, Conflict of Laws [1935] secs. 289.1-293.2). These choice of law rules rest upon the principle that movables have no situs, or rather that they accompany the person everywhere (Harding, Matrimonial Domicil and Marital Rights in Movables, 30 Michigan L. Rev. 859, 867-868 [1932], citing Story, Conflict of Laws [8th ed. 1883] sec. 186). However, some would only apply these rules to movables owned at the time of marriage and intangible movables acquired after marriage, but not to tangible movables acquired after marriage (e.g., Harding, Matrimonial Domicil and Marital Rights in Movables, supra, at pp. 867-872, 877). The assets in controversy are intangibles, consisting of stocks, bonds and bank accounts, located in Louisiana for the purpose of investment.

That the law of the State of the matrimonial domicile governs as to ownership of husband and wife of personal property is the law of the State of New York (Matter of Majot, 199 N.Y. 29, 32-34; Matter of Mesa Y. Hernandez, 172 App. Div. 467, 477, aff'd 219 N.Y. 566; Bonati v. Welsh, 24 N.Y. 157, 162-163; Hutchison v. Ross, 262 N.Y. 381, 396, 399-400, reargument denied 262 N.Y. 643; Hendricks v. Isaacs, 46 Hun 239, 242-243; Matter of James, 172 App. Div. 800, 802, reargument denied 174 App. Div. 936, rev'd on other grounds 221 N.Y. 242, reargument and amendment of remittitur denied 221 N.Y. 636; Chesny v. Chesny, 278 App. Div. 586, reargument and lv. to app'l den'd. 278 App. Div. 697), although the law of the state of the matrimonial domicile has not been followed in determining rights under contracts made elsewhere or the validity of inter vivos trusts with a situs elsewhere (e.g., Graham v. First Nat. Bank of Norfolk, 84 N.Y. 393, 399-400; Hutchison v. Ross, supra, 391, 394-397; Wyatt v. Fulrath, 16 N.Y. 2d 169).

The matrimonial domicile has been defined as the domicile of the husband, from the moment of the marriage until the matrimonial unit be dissolved (Harding, Matrimonial Domicil and Marital Rights in Movables, supra, at p. 865, citing Goodrich, Conflict of Laws [1927 ed.] secs. 29, 119).

None of the parties to this controversy is a Louisiana resident, nor was the decedent. The asserted basis

for applying Louisiana law is that the intangible personal property was physically present there, but this is outweighed by the dominant interest of this State in the marital rights of the parties (Auten v. Authen, 308 N.Y. 155, 162). New York is the state of the marital domicile, the state of the domicile of the spouse first acquiring this property, and the state of the most significant contacts with the matter in dispute. Were the court to apply other than domiciliary law with regard to personal property, fiduciaries would be confronted with the application of as many different laws as there were states in which the principal owned personal property.

Courts outside the state of Louisiana have refused to be bound by the Louisiana statute when it conflicted with their own laws. In Tirado v. Tirado, 357 S.W. 2d 468 (Tex. Ct. Civ. App. April 24, 1962, rehearing denied May 15, 1962), a divorce action brought by the plaintiff wife against her second husband in Texas, the state of the marital domicile, the defendant husband claimed that a working interest owned by the wife in and to certain oil and gas leases situated in Louisiana was community property by reason of Article 2400 of the Louisiana Civil Code. Said interests had been inherited by the plaintiff wife from her first husband. During her second marriage the production of oil and gas from Louisiana was sold and the proceeds were deposited in a Texas bank, as were the proceeds of oil and gas sold from lands in

Texas. The defendant argued he was entitled to one-half of all such funds because of the commingling. The wife urged that the Louisiana property was her separate property on the date of her second marriage and continued to be held in her name, that the sale of the Louisiana oil and gas was a sale of movable personal property; and that the cash received from the sale by her as a married woman domiciled in Texas was her separate property.

The Court held (1) Texas was the state of marital domicile; (2) oil and gas under both Louisiana and Texas law became personal property upon its production and severance; (3) the law of the state of the domicile of the parties determined the ownership of the proceeds of the sale; (4) the Louisiana community property statutes had no extraterritorial effect; (5) the Louisiana statutes and decisions were contrary to the laws and public policy of Texas, and the Texas courts will refuse to go against Texas law and will enforce Texas law as a matter of public policy; (6) under Texas conflict of laws rules the Louisiana personal movable property and income therefrom would fall as separate or community property depending on the local law of Texas, the state of marital domicile; and (7) that under Texas local law, the wife having shown the assets acquired after the second marriage were acquired from her separate property, the burden was on the defendant husband to show otherwise, which

he failed to do. The contentions of the plaintiff wife were sustained.

In the **instant** case the basis of the objection of the testator's daughter, the movant, is that the intangible personal property involved was, or was acquired from, the separate property of the testator, and not from any funds constituting the separate property of the widow. No issue as to this is raised by the widow's opposing papers. Her contention is that this property became community property solely by reason of Louisiana's community property laws. She raises no triable issue of fact, but relies on Louisiana law and submits that this question should be decided by the Louisiana court in the ancillary proceedings there.

For the reasons hereinabove set forth, the court holds that Louisiana law has no application, and that the widow acquired no community property rights in the personal property of the decedent. The question is properly before this court as the court of domicile (Surrogate's Court Act, sec. 40).

Further support for this result is found in Kraemer v. Kraemer, 52 Cal. 302, 305 (Cal. Sup. Ct. 1877); Estate of Burrows, 136 Cal. 113, 68 Pac. 488 (Cal. Sup. Ct., 2d Dept. 1902); Estate of Warner, 167 Cal. 686, 691, 140 Pac. 583, 585 (Cal. Sup. Ct. 2d Dept. 1914); Estate of Frees, 187 Cal. 150, 154; 201 Pac. 112, 113-114 (Cal. Sup. Ct. 1921); and Estate of Thornton, 19

P. 2d 778, 783, 784 (Cal. Sup. Ct. 1933) superseded upon rehearing 1 Cal. 2d 1, 33 P. 2d 1 (Cal. Sup Ct. 1934). In the latter case, on rehearing, amendments to a California statute, which thereafter purported to apply California's community property laws to property acquired elsewhere by non-domiciliaries who became California domiciliaries subsequent to the passage of the amendments, were held unconstitutional. A California statute, passed subsequent to the second decision in Thornton, purporting to divest a decent domiciliary of property acquired elsewhere while a non-domiciliary, and to subject it to community property rights, was held unconstitutional in Paley v. Bank of America National Trust & Sav. Ass'n, 159 Cal. App. 2d 522, 324 P. 2d 35 (Cal. 2d Dist. Ct. App., Div. 1, 1958). A still later California statute applying quasi-community property rights to personal property acquired elsewhere by non-domiciliaries who subsequently became California domiciliaries, but only as part of state power to control distribution of property in connection with actions for divorce or separate maintenance, was held valid in Addison v. Addison, 62 Cal. 2d 558, 43 Cal. Rptr. 97, 399 P. 2d 897 (Cal. Sup. Ct. 1965). It should be noted, however, that the Louisiana statute goes further than the several California statutes - by seeking to control personal property of persons who at no time became Louisiana domiciliaries. The rationale of the California cases and statutes was always a control of property rights of its own domiciliaries.

Other cases in which the forum state refused to give community property rights to its domiciliaries as to property acquired before they became domiciliaries include Oliver v. Robertson, 41 Tex. 422, 425 (Tex. Sup. Ct. 1874); Blethen v. Bonner, 30 Tex. Civ. App. 585, 71 S.W. 290, 291 (1902, rehearing denied 1903, writ of error denied by Tex. Sup. Ct. 1903); and Douglas v. Douglas, 22 Idaho 336, 125 Pac. 796 (Idaho Sup. Ct. 1912).

Decisions in which non-community property states applied the community property laws of other states **to property acquired** by residents of the forum state **while domiciled in the community property state** include People v. Bejarano, 145 Colo. 304, 358 P. 2d 866, 868 (Colo. Sup. Ct. 1961); Commonwealth v. Terjen, 197 Va. 596, 90 S.E. 2d 801 (Va. Sup. Ct. App. 1956) and In re Kessler's Estate, 177 Ohio St. 136, 203 N.E. 2d 221 (Ohio Sup. Ct. 1964).

A situation closely parallel to the **instant** case was presented in Brookman v. Durkee, 46 Wash. 578, 90 Pac. 914 (Wash. Sup. Ct. 1907), where the Supreme Court of the State of Washington held that a Washington statute could not validly give community property rights to a wife in her husband's property in Washington when both were domiciliaries of New York.

Louisiana Civil Code Article 2400, supra, has no application to the movables accounted for herein. Since under domiciliary law Powell Crichton's person-

al property followed his person and had a New York situs, it was not property acquired within Louisiana within the meaning of that statute. This court will give no effect to, and will not be bound by, Louisiana's attempt to apply its community property laws to the personal property of persons not domiciled in that state (Brookman v. Durkee, supra; Tirado v. Tirado, supra; Restatement, Conflict of Laws secs. 289, 290, 293, supra).

The motion by Mrs. McGehee, the testator's daughter of his first marriage, for partial summary judgment is granted. Her first objection to the account of the executrix is sustained. The objections of Martha Bailey-Crichton, the widow, are dismissed.

On this motion Mrs. McGehee also requests that the widow be enjoined from pressing her claim in the Louisiana courts and that the executrix be enjoined from abetting her in this. While this court has **in personam** jurisdiction over all the parties, and has ". . . power to restrain those within the jurisdiction from doing anything that is contrary to equity and good conscience to the injury and damage of others, even though the threatened inequitable conduct consists of the prosecution of an action in a foreign jurisdiction . . ." (Paramount Pictures, Inc. v. Blumenthal, 256 App. 756, 758-759, appeal dismissed 281 N.Y. 682), triable issues of fact exist as to whether the foreign suit was brought to evade domiciliary law,

or in an attempt to evade the public policy of this state. The request for injunctive relief is denied.

Settle order.

March 9, 1966.

OTTO C. JAEGER, Surrogate

APPENDIX F

At a Surrogate's Court held in and for the County of Westchester at the Court House at 166 Main Street, White Plains, New York, on the 17th day of March 1966.

P R E S E N T :

Hon. Otto C. Jaeger
Surrogate.

In the Matter of the Judicial Settlement of the Intermediate Account of Proceedings of MARGARET S. HEMINGWAY, As Executrix of the Last Will and Testament of POWELL CRICHTON, Deceased.

FILE NO. 408-1963, FINAL ORDER

A petition having been presented by respondent Gloria C. McGehee, verified the 2nd day of July 1965 and duly filed in this Court praying that Margaret S. Hemingway, as executrix of the Last Will and Testament of Powell Crichton, deceased, be cited to show cause why she should not render and settle an account of her proceedings as such executrix, and a citation having been issued to, and duly served upon Margaret S. Hemingway, requiring said executrix to show cause before this Court on the 27th day of July 1965 why said executrix should not render and settle her account as such executrix and said return date having been duly adjourned; and

The petition of Margaret S. Hemingway, as executrix under the Last Will and Testament of Powell Crichton, duly verified, having been filed by her attorney, Colin Campbell Ives, praying that her intermediate account submitted and filed therewith be judicially settled and allowed; and

A citation dated September 20, 1965, having been thereupon issued and directed to all persons interested in said accounting proceedings, cited them to show cause before this Court on the 9th day of November 1965 why a judicial settlement should not be had of the intermediate accounts of Margaret S. Hemingway as executrix of the Last Will and Testament of Powell Crichton, deceased, and said citation having been returned with proof of due service thereof on Kate Crichton, Edward Bailey Crichton, Paul Duncan McGehee, Jr., Thomas Crichton McGehee, John Gredler McGehee, Edward McDuffie McGehee, Thomas Crichton III, The First National Bank of Shreveport, Louisiana and Paul Duncan McGehee; and

On the return day of the said citation, said executrix having duly appeared by Colin Campbell Ives; respondent, Gloria C. McGehee, having duly appeared by Duer & Taylor; respondent, Powell Crichton, Jr., having duly appeared by Sidney S. Bobbe; respondent, Martha Bailey Crichton, having duly appeared by LeBoeuf, Lamb & Lieby; and David Cohn having been appointed and duly qualified as Special Guardian on behalf of the infant children Paul Duncan

McGehee, Jr., Thomas Crichton McGehee, John Gredler McGehee and Edward McDuffie McGehee; and

Kate Crichton, Edward Bailey Crichton, Thomas Crichton III, The First National Bank of Shreveport, Louisiana and Paul Duncan McGehee having failed to appear; and

Objections to said account having been filed by Gloria C. McGehee, Martha Bailey Crichton and Powell Crichton, Jr.; and answers to said objections of Gloria C. McGehee and Powell Crichton, Jr. having been filed by said executrix; and

Martha Bailey Crichton, widow of the deceased having claimed in her Notice of Appearance that she was: "* * * an owner of a 1/2 interest in the personal property which formerly belonged to the community of acquets and gains existing between her and the decedent, * * *" and said claim having been repeated in her objections filed herein; and

It appearing from said account that at the time of his death, decedent owned either in his name or to his credit intangible personal property consisting of stocks and bonds in custody accounts, and bank accounts in the state of Louisiana and that said intangible personal property, or similar property subsequently derived therefrom and income therefrom, exceeding $300,000 in value is still in Louisiana held by or for said executrix; and

Respondent Gloria C. McGehee, by her attorneys, Duer & Taylor, having moved by order to show cause, for partial summary judgment in connection with her first objection to the account of the executrix herein, denying and disallowing the claim of Martha Bailey Crichton, as set forth in Schedule "D-1" of the account of the executrix to be the owner of one-half interest in intangible personal property belonging to decedent in the State of Louisiana by reason of Louisiana's community property laws; or in the alternative for an order directing that such issue be severed and set down for trial; and to enjoin the widow from pressing her claim in any court except the Surrogate's Court, Westchester County and to enjoin the executrix from abetting the widow in pressing said claim in any court except the Surrogate's Court, Westchester County:

Now, upon reading and filing said order to show cause dated December 2, 1965 and the affidavit of Frederick M. Schlater, sworn to the 2nd day of December 1965, and the interim report of the Special Guardian David Cohn, dated January 25, 1966, in support of said motion; and upon the affidavits of Margaret S. Hemingway and John A. Brough both sworn to the 8th day of December 1965, in opposition thereto; upon said account and all of said pleadings and proceedings heretofore filed and had herein; and

Having heard the respective attorneys for all of the parties who have appeared herein, and David

Cohn, Special Guardian; and due deliberation having been had, and

The Surrogate having rendered and filed his opinion and decision in writing, dated March 9, 1966;

Now upon motion of Duer & Taylor attorneys for respondent, Gloria C. McGehee, it is

ORDERED, ADJUDGED and DECREED that said motion for partial summary judgment in connection with Gloria C. McGehee's first objection to the account of the executrix be the same hereby is granted; that her first objection to the account of the exectrix is sustained; that the objections of Martha Bailey Crichton to the account of the executrix are dismissed; that the claim of Martha Bailey Crichton to be an owner of a 1/2 interest in the intangible personal property which belonged to the decedent in the State of Louisiana be and the same hereby is denied and disallowed; and that no community of acquets and gains existed between the decedent and Martha Bailey Crichton as to said intangible personal property located in Louisiana; and

ORDERED, ADJUDGED and DECREED that said issue relating to said claim of Martha Bailey Crichton, raised by Gloria C. McGehee's first objection to the account of the executrix be and the same hereby is severed and that this court retains jurisdiction as to the remaining issues in these proceedings and it is further

ORDERED, ADJUDGED and DECREED that triable issues of fact are raised by the request of Gloria C. McGehee to enjoin Martha Bailey Crichton from pressing this claim in any court except the Surrogate's Court, Westchester County and to enjoin the executrix from abetting her in pressing said claim in any court except the Surrogate's Court, Westchester County, and that said request be and the same hereby is on this motion denied, without prejudice.

Dated: Westchester County, New York
March 17th, 1966

OTTO C. JAEGER, Surrogate

APPENDIX G

In the Matter of the ESTATE of Powell CRICHTON, Deceased.

Margaret S. HEMINGWAY, as Executrix of Powell Crichton, Deceased, Appellant, v. Gloria C. McGEHEE et al., Respondents.

Court of Appeals of New York.

June 1, 1967.

KEATING, Judge.

Powell Crichton died on November 15, 1962. A native of the State of Louisiana, he apparently migrated to the State early in life. He was a member of the New York Bar and resided for many years in Westchester County.

Mr. Crichton was twice married. His first wife died in 1923. Two years later he took his second wife, Martha, who along with two children of their marriage and the two children of the first marriage, survived him. The marriage of Martha and Powell Crichton was apparently not a happy one, and the couple separated 10 years later in 1935. Although the separation did not end in divorce, the couple lived separate and apart from 1935 until Powell's death.

The will of Mr. Crichton made no provision for

his second wife. Instead, all of his estate passes, under the terms of his will, in trust, with the income payable in varing percentages to his four surviving children. The estate was valued at approximately $360,000. The bulk of that property consisted of bank acounts in Louisiana and stocks and bonds held in custody accounts in that State.[1] In addition to his personal property, the deceased left real property also located in Louisiana.

The will of Mr. Crichton named his secretary, Margaret S. Hemingway, as executrix of the estate. Miss Hemingway qualified in the State of New York where the will was probated and in the State of Louisiana where ancillary proceedings were instituted. On June 3, 1965, Miss Hemingway as ancillary executrix initiated in Louisiana a proceeding for the approval of her inventory and for the computation of the Louisiana inheritance taxes. The widow asserted a claim to community property rights in the personal property there inventoried, which was objected to by the son and daughter of the first marriage. The preliminary exceptions of the son and daughter to the jurisdiction of the Louisiana court to determine the ownership of the personal property were rejected by the Louisiana court, and on January 4, 1966 that court issued an order "permanently" restraining the

[1] The decedent owned lands in Louisiana containing oil and gas deposits. This property was managed by his brother who apparently invested the income derived therefrom in the stocks and bonds and maintained the bank accounts.

executrix from disposing of or removing the property from Louisiana. As of this date, the Louisiana courts have yet to make a ruling on the merits of the widow's claim.

While these proceedings were taking place in Louisiana the executrix filed an intermediate account in New York on September 20, 1965. The account set forth as allowed but unpaid the widow's share of the community property in the sum of $156,000.

On December 2, 1965 the daughter of the first marriage filed an objection to the allowance of the community property claim on the ground that (1) Louisiana's community property laws were inapplicable; (2) under Louisiana law the claim was invalid; and (3) the widow had no rights except to take against the will as provided for in section 18 of the Decedent Estate Law, Consol. Laws, c. 13—a right which she had not chosen to exercise.

The widow appeared and filed an objection to the inclusion in the account of items being accounted for in Louisiana on the ground that (1) they were being held by Margaret Hemingway as ancillary executrix in Louisiana and had not come into her hands as domiciliary executrix and (2) the Louisiana court had enjoined the ancillary executrix from removing or disposing of those items.

On a motion for partial summary judgment made

by the daughter, the Surrogate held that Louisiana's community property laws were not applicable and he sustained the objection to the allowance of the claim for community property.[2] The executrix and the widow appealed to the Appellate Division (Second Department) which unanimously affirmed. During the course of that proceeding, the widow's appeal was dismissed for failure to prosecute. The executrix appeals by leave of this court from the order of the Appellate Division.

There are a number of questions which must be resolved by this appeal. The first of these relates to the jurisdiction of the Surrogate to determine whether or not the widow has a community interest in the property in question. It is urged that the "Surrogate's Court erred in determining the ownership of property situated in Louisiana since the Surrogate's Court did not have jurisdiction over such property nor over the ancillary executrix appointed in Louisiana."

There is little question but that the Surrogate lacked the power to determine the rights of persons, not parties to this proceeding and over whom he had no jurisdiction, in the bank accounts, stocks and bonds located in Louisiana. (Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2L.Ed.2d. 1283; Riley v. New York

2 The order of the Surrogate related only to the intangible personal property located in Louisiana. The respondents did not question the applicability of Louisiana law to the real property located in Louisiana.

Trust Co., 315 U.S. 343, 62 S.Ct. 608, 86 L.Ed. 885; Baker v. Baker, Eccles & Co., 242 U.S. 394, 37 S. Ct. 152, 61 L.Ed. 386.) The Surrogate, however, does have the power to render a decree which is binding on those persons over whom he has in personam jurisdiction. (Hanson v. Denckla, supra, 357 U.S. p. 254, 78 S.Ct. 1228.)

It is not disputed that the Surrogate had such jurisdiction over the widow and other beneficiaries of the estate. The Surrogate also had jurisdiction over the sole executrix of the estate. The authority of the executrix to represent the estate is recognized in Louisiana and New York and, therefore, any judgment rendered in this jurisdiction is binding on her both here and in Louisiana. (Carpenter v. Strange, 141 U.S. 87, 104, 11 S.Ct. 960, 35 L.Ed. 640; Helme v. Buckelew, 229 N.Y. 363, 367, 128 N.E. 216; Turley v. Dreyfus, 33 La.Ann. 885; Restatement, Conflict of Laws 1st and 2d [Tent. Draft], sec. 506, 510; Leflar, Conflict of Laws, sec. 195.)

The Surrogate, therefore, had jurisdiction to render an in personam judgment conclusively resolving the legal issues presented by this case. That he had subject-matter jurisdiction to determine whether the wife was the owner of property listed in the name of the decedent certainly cannot be questioned. (Surrogate's Ct. Act, sec. 40.)

It is urged, however, that the permanent injunct-

ion issued by the Louisiana court, pending termination of the proceeding in that jurisdiction, is entitled to full faith and credit and precludes a determination on the merits by the courts of this State. This order of the Louisiana court, though labled permanent, is nothing more than an injunction **pendente lite,** issued for the purpose of preserving the status quo until the Louisiana courts decide the issue on the merits. The order refers to the property in question as "allegedly" belonging to Mrs. Crichton and refers to her "alleged" interest therein. It is not a final order and, since there is no fnial Louisiana judgment on the merits, the courts of this State are not prohibited by the full faith and credit clause from dealing with the case on the merits.

The discussion thus far has been confined to the preliminary questions presented by this appeal. The main issue posed for our consideration is the choice of the applicable law.

Louisiana is one of several States of the Union which regulate the property rights of married persons through a system of laws known as community property. While this opinion is not the place for a detailed study of the community property system in Louisiana[3], a somewhat general discussion of those laws is appropriate.

In the absence of a marriage contract to the con-

3 See Morrow, Matrimonial Property Law in Louisiana, 34 Tul. L.Rev. 3 (1959).

trary, every marriage in the State of Louisiana "superinduces of right" the partnership of "acquets and gains". (La.Civ.Code of 1870, art. 2399.) By virtue of this provision all property acquired by either spouse during marriage becomes the property of both and, upon dissolution of the marriage or upon the death of either spouse, the property is divided equally between the two or between the surviving spouse and the heirs of the deceased. (La.Code of 1870, art. 2406.) During the marriage, however, the husband has complete control of the property and he may dispose of movable property by gift or sale. (La. Code of 1870, art. 2404; Oliphint v. Oliphint, 219 La. 781, 54 So.2d 18 [1951].) For the purpose of income tax laws, however, the wife is regarded as having a present interest as opposed to a mere expectant interest in the property. (Bender v. Pfaff, 282 U.S. 127, 51 S.Ct. 64, 75 L.Ed. 252.)

It should be noted that not all of the property of the spouses becomes part of the community of "acquets and gains." Property owned by either party prior to the marriage is not included nor is the property acquired during the marriage by gift, devise or bequest. (See Morrow, Matrimonial Property Law in Louisiana, supra.)

These rules just enumerated are part of "an ingenious, complex, and highly purposeful distribution of property rights between husband and wife" (United States v. Yazell, 382 U.S. 341, 351, 86 S.Ct. 500, 506,

15 L.Ed.2d 404). It is obvious, however, that Louisiana has no interest in regulating the property rights of married persons who are domiciled elsewhere, who were not married in that State nor ever resided there as husband and wife. Indeed, the Louisiana courts have recognized this to be the case. (See Hyman, Lichtenstein & Co. v. Schlenker & Hirsch, 44 La.Ann. 108.)[4]

The Louisiana Legislature has determined, however, that its community property laws should govern property acquired in Louisiana by nonresidents after their marriage. (Code of 1870, art. 2400.)[5] While it has been suggested that this action is indicative of the strength of the community property system in Louisiana (Morrow, Matrimonial Property Law in Louisiana,

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[4] Prior to the enactment of article 2400 of the Code of 1870 (infra, n. 5), the Louisiana courts refused to apply the community property laws to property owned by nonresidents even where real property located in Louisiana was involved. (Succession of McGill, 6 La.Ann. 327 (1851); Huff v. Boreland, 6 La.Ann. 436 (1851); Wolfe v. Gilmer, 7 La.Ann. 583 (1852).) Indeed, in at least one case after the enactment of the statute the court completely ignored the statute and held that real property purchased by a nonresident did not become community property. (Marlatt v. Citizen's State Bank & Trust Co., 180 La. 387, 156 So. 426 (1934); contra Smith v. Gloyd, 182 La. 770, 162 So. 617 (1935); Stanton v. Harvey, 44 La.Ann. 511, 10 So. 778 (1892); but cf. Freret v. Taylor, 119 La. 307, 44 So. 26 (1907).) The cases are discussed in Marsh, Marital Property in Conflict of Laws, 197-201.

[5] The statute provides: "All property acquired in this State by non-resident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."

34 Tul.L.Rev. 3, 12, supra), no reason has been suggested, either by the appellant or the authorities on Louisiana law, for the application of the community property laws of Louisiana to intangible personal property of those married and domiciled in other jurisdictions.

An examination of the context in which article 2400 was enacted would appear to indicate that it was intended to apply to property purchased by non-residents who, subsequent to the acquisition of the property, become residents of Louisiana. In two cases decided by the Louisiana Supreme Court shortly before the enactment of article 2400, it was held that the **real** property of such persons located in Louisiana was not subject to the community property laws of Louisiana but rather to the laws of the State where the owners were domiciled at the time the property was acquired. (Huff v. Borland, 6 La.Ann. 436; Wolfe v. Gilmer, 7 La.Ann. 583.) Louisiana does, of course, have a substantial interest in regulating the property rights of married persons domiciled in Louisiana, regardless of when the property was acquired, and it is, therefore reasonable to assume that the effectuation of this governmental interest motivated the enactment of article 2400. (Compare Addison v. Addison, 62 Cal.2d 558, 43 Cal.Rptr. 97, 399 P.2d 897.) It might be noted that, although the Louisiana statutes subject to the community of "acquets and gains" all property held by persons married in Louisiana and

all property acquired by persons married in other jurisdictions (art.2399, supra) after they become residents of Louisiana (La.Code of 1870, art. 2401), no provision other than article 2400 is applicable to property acquired in Louisiana by nonresidents who later move to Louisiana.

In any event, while we assume that the presence of the stocks, bonds and bank accounts in Louisiana gives that State the power to adjudicate rights in that property according to its own laws, New York, as the State in which Martha and Powell Crichton were domiciled during their marriage,[6] certainly has an interest sufficient to justify the application of its law without violating the full faith and credit clause of the Federal Constitution. (Richards v. United States, 369 U.S. 1, 15, 82 S.Ct. 585, 7 L.Ed.2d 492; Hanson v. Denckla, 357 U.S. 235, 253 78 S.Ct. 1228, 2 L.Ed.2d 1283, supra; Crider v. Zurich Ins. Co., 380 U.S. 39, 85 S.Ct. 769, 13 L.Ed.2d 641; Carroll v. Lanza, 349 U.S. 408, 75 S.Ct. 804, 99 L.Ed. 1183; Pacific Employers Ins. Co. v. Industrial Acc. Comm., 306 U.S. 493, 59 S.Ct. 629, 83 L.Ed. 940; see, generally, Leflar, Constitutional Limitations on Free Choice of Law, 28 Law & Contemp.Prob. 706.)[7] And in this litigation we

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6 It appears that Martha Crichton resided in Bermuda at the time of the testator's death.

7 See United States v. Yazell (supra) for a discussion of the interest a State has in the application of laws regulating the marital property rights of its own domiciliaries and the importance which the Supreme Court attaches to giving effect to that State interest. The case involved a choice beween the application of Federal

must determine whether to give effect to the attempt of Louisiana to regulate the marital relationship of New York domiciliaries.

The traditional choice of law rule in this area is one which looks to the law of the marital domicile to determine the rights of the husband and wife in property acquired during coverture. (Wyatt v. Fulrath, 16 N.Y.2d 169, 172, 264 N.Y.S.2d 233, 234, 211 N.E.2d 637, 638; Matter of Majot's Estate, 199 N.Y. 29, 32, 92 N.E. 402, 29 L.R.A.,N.S., 780; Matter of Mesa y Hernandez, 172 App.Div. 467, 159 N.Y.S. 59, affd. 219 N.Y. 566, 114 N.E. 1069.) This rule has, however, been rejected by this court on at least two occasions, apparently for the reason that it failed, as most traditional conflict of laws rules do, to take cognizance of the policies of jurisdictions other than those which have what is regarded as the sole controlling contact and the interests which those other jurisdictions have in the application of their laws. (Hutchison v. Ross, 262 N.Y. 381, 187 N.E. 65, 89 A.L.R. 1007; Wyatt v. Fulrath, 16 N.Y.2d 169, 264 N.Y.S.2d 233, 211 N.E.2d 637, supra.) In both these cases we applied the law of a jurisdiction other than that of the marital domicile, and the appellant, in effect, urges that those cases represent the rule that, in all cases, New York will now apply the law of the situs of the intangible

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or State law. The court held that, in the absence of a clear congressional intent that Federal law govern, the Federal courts should apply the law of the marital domicile.

property, that is the law of the jurisdiction in which the documents embodying the intangible property rights are found.

We do not so read our decisions in **Wyatt** and **Hutchison,** nor, for reasons which shall be alluded to, should they be so read. The choice of law decision we must make in this case should be guided by the same considerations that have guided our decisions in other choice of law cases (Babcock v. Jackson, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279, 95 A.L.R.2d 1; Downs v. American Mut. Liab. Ins. Co., 14 N.Y.2d 266, 251 N.Y.S.2d 19,200 N.E. 2d 204, 1 A.L.R.3d 922; Matter of Bauer, 14 N.Y.2d 272, 278, 251 N.Y.S.2d 23, 26, 200 N.E.2d 207, 209 [dissenting opinion of Fuld, J., adopted by the Legislature in Estates, Powers and Trust Law, Consol.Laws, c. 17-b, Sec. 3—5.1, subd. (g), par. (2), cl. (C)]; cf. Matter of Bulova's Estate, 14 A.D.2d 249, 220 N.Y.S.2d 541) and which were, in essence, responsible for our decisions in **Wyatt** and **Hutchison.**

The choice of law problem here should be resolved by an examination of the contacts which Louisiana and New York have with this controversy for the purpose of determining which of those jurisdictions has the paramount interest in the application of its law. As we noted in Dym v. Gordon, 16 N.Y.2d 120, 124, 262 N.Y.2d 463, 466, 209 N.E.2d 792, 794, this process requires us "first to isolate the issue, next to identify the policies embraced in the laws in conflict, and finally to examine the contacts of the re-

spective jurisdictions to ascertain which has a superior connection with the occurrence and thus would have a superior interest in having its policy or law applied." (See, also, dissenting opinion of FULD, J., in Dym v. Gordon, supra, p. 130, 262 N.Y.S.2d p. 471, 209 N.E.2d p. 797; Macey v. Rozbicki, 18 N.Y.2d 289, 292, 274 N.Y.S.2d 591, 593, 221 N.E.2d 380, 381, concurring opinion of Keating, J.)

The issue in this case is whether the community property laws of Louisiana should be applied to govern the property rights of New York domiciliaries in intangible personal property acquired during coverture. From the previous discussion, it is clear that the community property system is designed to regulate the property rights of married persons and, in particular, to protect the interest of each spouse in the property accumulated during marriage. (See United States v. Yazell, supra.) For reasons which become obvious merely in stating the purpose of the rule, Louisiana has no such interest in protecting and regulating the rights of married persons residing and domiciled in New York.

The State of New York which has such an interest has not adopted a community property system. Instead it has sought to protect a **surviving** spouse by giving her a right to take one third of the entire estate of the deceased as against a testamentary disposition by which the deceased has attempted to exclude her from a share of the estate. (Decedent Estate

Law., Sec. 18.) And, depending upon the nature of the property in the estate, a surviving spouse under New York law might well be entitled to receive a greater portion of the over-all estate than under the community property system.

By affording the surviving spouse such a right in the estate of the deceased spouse, the Legislature has sought to preserve the right of the testator to distribute his property as he desires, while at the same time to provide protection for the surviving spouse. New York, as the domicile of Martha and Powell Crichton, has not only the dominant interest in the application of its law and policy but the only interest. (See McSwain v. McSwain, 420 Pa. 86, 90-97, 215 A.2d 677.)

It is urged by the appellant that the Louisiana contacts with this case give it the paramount interest in the application of its law. Among the contacts which are urged as being significant are the facts the deceased was born in Louisiana, that, although he was domiciled in New York, the bulk of his fortune was made in Louisiana, and that the documentary evidences of his intangible property are located in that jurisdiction. Exactly how these contacts are related to the policies sought to be vindicated by Louisiana's community property laws is not made clear. The rea-

son, no doubt, is that they have no relation whatever.[8]

Up to this point we have not considered whether the Louisiana courts would, in fact, apply their own law to determine the widow's rights in the property in question. Although it would appear from the unequivocal wording of the statute that this would be the case, the previous discussion of the context in which article 2400 was enacted, as well as the pertinent Louisiana decisions in this area, leads to the conclusion that the Louisiana courts might well apply New York law. Perhaps the leading Louisiana case in this area is Williams v. Pope Mfg. Co., 52 La.Ann. 1417, 27 So. 851, 50 L.R.A. 816 [1900]. There the Supreme Court of Louisiana held that a cause of action for personal injuries suffered in Louisiana was an intangible property right which had its legal situs at the domicile of the married woman and could not be

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[8] Contacts obtain significance only to the extent that they relate to the policies and purposes sought to be vindicated by the conflicting laws. Once these contacts are discovered and analyzed they will indicate (1) that there exists no true conflict of laws, as in the case at bar and as in most choice of law cases, or (2) that a true conflict exists, i. e., both jurisdictions have an interest in the application of their law. In the former case, of course, the law of the jurisdiction having the only real interest in the litigation will be applied. (Babcock v. Jackson, supra; Macey v. Rozbicki, supra; Oltarsh v. Aetna Ins. Co., 15 N.Y.2d 111, 256 N.Y.S.2d 577, 204 N.E.2d 622.) In the case of a conflict, while our decisions have normally resulted in application of forum law (Wyatt v. Fulrath, 16 N.Y.2d 169, 264 N.Y.S.2d 233, 211 N.E.2d 637, supra), we are not as yet prepared to formulate what may be deemed a rule of general application but prefer rather to give further consideration to the question as the cases arise (See Currie, The Disinterested Third State, 28 Law & Contemp.Prob., 754, 756-764.)

said to have been property acquired in Louisiana. Therefore, the plaintiff wife, a nonresident of Louisiana, was permitted to sue instead of her husband. In discussing the basis of its decision the court wrote (p. 1441, 27 So. p. 861): "[The cause of action] is to be treated and considered as personal property, its legal situs is at the matrimonial domicile of the plaintiff in the state of Mississippi, and for that reason cannot be considered as a community asset with its domicile in the state of Louisiana; and, being a debt, or chose in action, it belongs and attaches to the person of the plaintiff, follows her wherever she goes, and possesses no other situs than as she is pleased to give it."

This case was distinquished in a later decision of the Louisiana Supreme Court. The court appeared to indicate that the basis of the decision was not that article 2400 was inapplicable but rather that it would not be applied where the domiciliary law was not inimical to the policy of the State of Louisiana. (Matney v. Blue Ribbon, Inc., 202 La. 505, 12 So.2d 253 [1942].)

The application of New York law to the facts in this case could hardly be said to be inimical to the policy of Louisiana. The protection afforded the wife under our law certainly makes adequate provision for her financial security. Indeed, as noted earlier, it can even result in the wife's receiving a greater interest in the estate of the deceased than under Louisiana law.

Therefore, whether **Williams** or **Matney** are regarded as controlling, a rather strong argument can be made that the Louisiana courts, under these circumstances, would not apply article 2400.

The remaining Louisiana cases in this area are generally conflicting[9] and their over-all effect has led one of the leading commentators on the Louisiana community property system to conclude that "the question of the application of [article] 2400 to personal property may be said to be unsettled." (Daggett, Community Property System of Louisiana 113 [1945]; see, also, Marsh, Marital Property in Conflict of Laws 197-201 [1952]; Neuner, Marital Property and the Conflict of Laws, 5 La.L.Rev. 167, 170 [1943].)

The unsettled nature of Louisiana law, along with the fact that the deceased could have given his spouse by will in New York the same benefits she would have been entitled to under Louisiana law, refute the contention that the defendant, in leaving his property in Louisiana, intended to vest in a woman from whom he had been separated for nearly 30 years a right to one half of his personal estate accumulated solely through his own effort and labor. For this reason and because of the differing governmental interests involved, this case is distinquishable from Hutchison v. Ross, 262 N.Y. 381, 187 N.E. 65, 89 A.L.R. 1007, supra, and Wyatt v. Fulrath, 16 N.Y.2d 169, 264

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9 See footnote 4 supra.

N.Y.S.2d 233, 211 N.E.2d 637, supra, relied upon by the appellant in support of her argument for the application of Louisiana law.

In the latter case, a married couple domiciled in Spain—a nation having a community property system similar to that of Louisiana—placed cash and securities in New York for safekeeping and investment. A substantial portion of this property was placed with New York custodians in joint accounts. The husband and wife either expressly agreed in writing that the New York law of survivorship would apply or agreed to a written form of survivorship account conformable to New York law.

Relying upon sections 12-a of the Personal Property Law, Consol.Laws, c. 41, and 47 of the Decedent Estate Law, which are designed to encourage investment of funds in this State by permitting a nondomiciliary to designate New York law as applicable to determine questions of law relating to testamentary dispositions of personal property located here as well as **inter vivos** trusts having a situs in this State, we held that New York law and not the Spanish community property laws would govern. In so doing, we cited the earlier case of Hutchison v. Ross (supra) in which the court, speaking through Judge Lehman, relying upon section 12-a of the Personal Property Law, held that it was the policy of this State to permit out-of-State settlors of trusts to designate that rights in that property be determined by New York law.

In both these cases we were giving effect to New York's policy and governmental interest. That this was our only concern is evidenced by the fact that in **Wyatt** we did not apply New York law to intangible personal property which had a situs in England and which had been removed to this State after the decedent's death, but deferred to whatever interest that jurisdiction might have by indicating that its whole law—local law and choice of law rules—should govern. "The reasons **grounded on New York policy** and affected by the physical transfer of the property to New York during the lifetime of the spouses **and** by their directions relating to it do not necessarily apply to property of Spanish nationals placed in a third country during their lifetime." (Wyatt v. Fulrath, supra, p. 175, 264 N.Y.S.2d p. 237, 211 N.E.2d p. 640; emphasis added.)

In situations such as that present in this case, where the foreign jurisdiction has no interest in the application of its law, where there was no clear expression of intent that foreign law govern[10] and where we have the power to apply our own law and give effect to the policy this State has adopted in regulating the rights of married persons we should apply our own law.

The order appealed from should be affirmed, with costs to all parties appearing and filing separate briefs payable out of the estate.

FULD, C. J., and VAN VOORHIS, BURKE, SCILEPPI, BERGAN and BREITEL, JJ., concur.

Order affirmed.